IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 526 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BIRLA VXL LIMITED

Versus

CHHAYA NAGAR PALIKA

Appearance:

1. Appeal from Order No. 526 of 1998

NANAVATI ASSOCIATES for Petitioner No. 1

NANAVATY ADVOCATES for Respondent No. 1

RULE SERVED for Respondent No. 2

GOVERNMENT PLEADER for Respondent No. 3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/10/2001

ORAL JUDGEMENT

The appellant-original plaintiff challenged in

this appeal the impugned order dated 31.8.1998 passed by the learned Civil Judge (S.D.), Porbandar dismissing application Ex.5 in Special Civil Suit No.25/96. Earlier notice was ordered to be issued in this appeal and later on after hearing the other side it was admitted on 23.2.1999. Along with this appeal, Civil Application No.10055/98 is filed wherein initially ad-interim relief in terms of para 6(B) was granted by the learned Single Judge of this court while issuing notice to the other side later on the said Civil Application was disposed of finally in view of the order passed in Civil Application No.686/99 filed by the respondent-Nagarpalika.

As per the interim order passed by this court by the learned Single Judge of this court on 11.12.98 the appellant already deposited Rs.7,00,000/= before this court which was permitted to be withdrawn by the respondent-Nagarpalika subject to the final outcome of this appeal. Thus, ad-interim relief granted earlier in terms of para 6(B) of Civil Application No.10055/98 is in operation subject to deposit of withdrawal of Rs.7,00,000/=.

Considering the peculiar facts and circumstances of the case submitted that this appeal be disposed of without going into the legality and validity of the impugned order passed by the learned trial Judge with a direction to the learned trial Judge to decide the Special Civil Suit No.25/96 as early as possible by continuing the ad-interim relief granted earlier in terms of para 6(B) on Civil Application No.10055/98 till final disposal of the suit.

Accordingly, without going into the legality and validity of the impugned order passed by the learned trial court this appeal is disposed of with a direction to the learned trial Judge to Special Civil Suit No.25/96 as early as possible and not later than 30.4.2002. Parties shall fully cooperate with the final disposal of the suit before the trial Court. till then interim relief granted earlier on Civil Application No.10055/95 shall continue.

It is made clear that in case if the appellant-plaintiff succeeds then it will get back amount of Rs.7,00,000/= which is withdrawn by the respondent. But in case if the appellant fails in the suit it shall pay the remaining amount to the respondent-Nagarpalika subject to its right of appeal. It is expected that while deciding the main suit the learned Trial Judge shall not be influenced with any observations made by his

predecessor in his impugned order while deciding application Ex.5.

(B.J.Shethna, J.)

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